Supreme Court, U.S.
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No. 88-894

IN THE

# SUPREME COURT OF THE UNITED STATES

October 1987 Term

JOHN E. REARDON, *et al.*

*Petitioner,*

*v.*

VIRGINIA E. REARDON, THEODORE M. COSTA, MARSHALL GORDON, DR. GOLDSTEIN, JUDGE MILLER, CATHY SCHILLING, MR. MCDONNELL, MR. DAYTON, MR. LOMBARD, MR. COCHRANE, COLLINGSWOOD SCHOOL BOARD, BORO OF COLLINGSWOOD, AND CHILD STUDY TEAM OF COLLINGSWOOD,

*Respondent.*

## OPPOSITION TO PETITION FOR WRIT OF CERTIORARI FROM THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

## BRIEF OF RESPONDENTS MARSHALL GORDON, AND COLLINGSWOOD SCHOOL BOARD.

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## INTRODUCTION

This brief is submitted in opposition to the Petition for a Writ of Certiorari from the ruling of the Third Circuit Court of Appeals. In light of the meritless nature of the Petition for Certiorari, it is respectfully submitted that an extensive brief arguing the merits of Petitioner's underlying claims is unwarranted and would only serve to impose upon the Court's valuable time and resources. This brief is therefore limited to arguments against the Court granting a Writ of Certiorari in this matter.

## ARGUMENTS

### POINT I

### THERE ARE NO GROUNDS FOR THE ISSUANCE OF A WRIT OF CERTIORARI

This matter arises out of Petitioner's displeasure with the educational placement of his son. Without availing himself of existing administrative procedures, Petitioner filed numerous suits in Federal District Court, naming many of the parties to this action in several different suits. Two consolidated matters were dismissed by the District Court [Item number one of Petitioner's Appendix], which Order was affirmed by the Third Circuit Court of Appeals. Petitioner now seeks a Writ of Certiorari in order to have this Court review that ruling.

Rule 17 of the Rules of the Supreme Court of the United States details the bases for granting a Petition for a Writ of Certiorari. While review of a matter upon a Writ is within the discretion of the Court, *Fay v. Noia*, 372 U.S. 391 (1963), certain factors may be considered in determining whether the special or important reasons for such review exist. There are no such reasons in this case.

Petitioner has failed to show, nor has counsel been able to locate, any decisions in conflict with the decision of the District Court, which was affirmed by the Third Circuit Court of Appeals. Judge Rodriguez examined all of the claims made by Petitioner as thoroughly as possible. He then issued a clear and detailed ruling dismissing each one, finding that Petitioner had ignored available administrative procedures. This ruling is in accord with the case law which requires exhaustion of administrative remedies prior to instituting a suit of this type. *Tokarcik v. Forest Hills School District*, 665 F. 2d 443 (3d Cir. 1981), *Riley v. Ambach*, 668 F. 2d 635 (2d Cir. 1981), and *Smith v. Robinson*, 468 U.S. (1984). The

Court also found no state action and no violations of any recognizable rights of the Petitioner.

Petitioner has also failed to show, nor can counsel fathom, how the issues presented in this Petition constitute an important issue of federal law which has not been, but should be, settled by this Court. The issues presented as "Writ Questions" are much the same as those presented by Petitioner throughout the torturous course of litigation. They are highly fact specific, and the order of the Court of Appeals is not one which will affect many, if any, other litigants.

Finally the Court of Appeals affirmed a decision by the District Court which is a detailed and well reasoned ruling, considering all issues raised by the Petitioner, and giving them more consideration than they were due. To grant this Petition would not only cause the Court and defendants to expend valuable time, but also encourage continued meritless litigation of this action by the Petitioner. It is respectfully submitted that there are no grounds for the issuance of a Writ of Certiorari and that the Petition should be denied.

## POINT II

## IN LIGHT OF THE FRIVOLOUS NATURE OF THIS PETITION, DAMAGES SHOULD BE AWARDED

Rule 49.2 of the Rules of the Supreme Court of the United States authorizes the Court to award damages where a Petition for a Writ of Certiorari is frivolous. In *Southern Railway Company v. Gadd,* 233 U. S. 572 (1914), the Court held that where "the case was carefully and fully considered in both of the Courts below", and the arguments advanced justified the conclusion that the Writ was brought for the purposes of delay, a penalty in the form of damages was appropriate. *Southern Railway Company v. Gadd, supra* at page 581. Throughout the history of this matter, Petitioner has refused to use available administrative proceedings and

has abused the Federal Courts as a means of venting his frustration. He has filed numerous law suits, making the same baseless and outrageous claims against the same parties again and again. He has filed suits against members of the Federal and State Judiciary who have ruled against him, alleging that they are members of a conspiracy to deny him his parental rights. He has also included as defendants in these suits attorneys who represented parties he had named in earlier litigation. "Parties should not be subjected to the delay of proceedings for review in this Court without reasonable cause and our power to make compensation to some extent for the loss occasioned by an unwarranted delay ought not be overlooked." *Whitney v. Cook*, 99 U.S. 607 (1878).

In his Opinion in this matter, Judge Rodriguez stated that assessing sanctions against the Petitioner was warranted as the "legal foundation upon which he bases his claims is, without dispute, groundless." [Page 33 of Item No. 1 of Petitioner's Appendix]. However, Judge Rodriguez did not impose sanctions at that time, apparently hoping that such a warning would be sufficient. It is now all too apparent that a mere warning will not suffice to prevent Petitioner from continuing upon his course. Sanctions, imposed by the highest Court in the land, may bring a different result. "Experience teaches that the only way to discourage frivolous appeals . . . is by the use of our power to award damages." *Whitney v. Cook, supra* at 607.

## CONCLUSION

For the above stated reasons, it is respectfully requested that this Court deny the Petition for a Writ of Certiorari from the ruling of the Third Circuit Court of Appeals, and that this Court impose sanctions in the form of damages pursuant to Rule 49.2 of the Rules of the Supreme Court of the United States.

Respectfully submitted,

_____

Edward G. D'Alessandro

Dated: December 7, 1988